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9
10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF WASHINGTON**

12 NICHOLAS ROLOVICH,
13 Plaintiff,

14 v.

15 WASHINGTON STATE
UNIVERSITY, et al.,
16 Defendants.

NO. 2:22-cv-00319-TOR

DEFENDANT'S RULE 60(a)
MOTION TO CORRECT
CLERICAL MISTAKE

February 5, 2025
Without Oral Argument

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DEFENDANT'S RULE 60(a)
MOTION

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MOTION

Defendant Washington State University (WSU) respectfully moves the Court pursuant to Federal Rule of Civil Procedure 60(a) to “correct a clerical mistake or a mistake arising from oversight or omission” in its Order on Cross Motions for Summary Judgment, ECF No. 135. WSU requests that the Court correct two aspects of its Order:

First, the Order states that the parties’ cross-motions for summary judgment “were submitted for consideration *with* oral argument.” *Id.* at 1 (emphasis added). Argument was not requested by either party nor heard. *See* ECF Nos. 88, 93.

Second, the Order states that, under Title VII, “[a]n accommodation may result in an undue hardship if there is ‘more than a de minimis cost to the employer . . . [or] more than a de minimis impact on coworkers.’” ECF No. 135 at 6 (quoting *Balint v. Carson City*, 180 F.3d 1047, 1054 (9th Cir. 1999) (en banc)). Although the passage accurately quotes *Balint*, the Supreme Court recently disapproved of the “de minimis cost” language. *See Groff v. DeJoy*, 600 U.S. 447, 468 (2023). Notwithstanding the reference to that language, the Court’s Order cites and correctly applies *Groff* in concluding that the “unrebutted” and “overwhelming” evidence showed that accommodating Plaintiff would have imposed an undue hardship on WSU by resulting in “increased travel costs, harm to recruitment and fundraising efforts, and damage to WSU’s reputation and donor commitments, in addition to an increased risk of exposure of COVID-19 to student athletes, other coaching staff, the media and the public.” ECF No. 135

1 at 6–7. Those burdens are undoubtedly “substantial in the context of [WSU’s]
2 business.” *Groff*, 600 U.S. 471; *see* ECF No. 93 at 24–25. Accordingly, under
3 Rule 60(a), removing the above quotation and citation to *Balint* would not change
4 the Order’s “operative, substantive terms” and would maintain “fidelity to the
5 intent behind the original judgment.” *Garamendi v. Henin*, 683 F.3d 1069, 1079
6 (9th Cir. 2012).

7 For those reasons, WSU respectfully requests that the Court correct the
8 two sentences in its Order referenced above.

9 DATED this 6th day of January, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on January 6th, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice.

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED this 6th day of January, 2025, at Seattle, Washington.

/s/Zachary J. Pekelis
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